

APR 23 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CRISTOBAL BARRAZA-GARCIA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-74738

Agency No. A76-857-876

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 15, 2008^{**}

Before: B. FLETCHER, FISHER and PAEZ, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order denying petitioner's third motion to reopen.

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Respondent's motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). A party may file only one motion to reopen removal proceedings, and that motion must be filed not later than ninety days after the date on which the final order of removal was entered. *See* 8 C.F.R.

§ 1003.2(c)(2). The motion to reopen filed September 11, 2007 was petitioner's third motion to reopen and was filed nearly three years after petitioner's November 30, 2004 final order of removal. Petitioner has not established that he is entitled to equitable tolling. *See Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (stating that equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error"). Accordingly, the BIA did not abuse its discretion in denying petitioner's motion to reopen as untimely and numerically barred. *See Iturribarria*, 321 F.3d at 894.

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.